

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 CASE NO. 4:20-cv-40020-DHH

4 -----x
5 GREAT LAKES INSURANCE SE,

6 Plaintiff/Counterdefendant

7 vs.

8 MARTIN ANDERSSON,

9 Defendant/Counterplaintiff

10 -----x

11

12

13 CONTINUED DEPOSITION OF ANDREW BALL

14 Conducted Remotely

15 Havers Lookout

16 Havers

17 Tortola, British Virgin Islands

18 June 29, 2021

19 10:00 a.m. to 10:22 a.m.

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24 Reporter: Laurie J. Berg, CCR, RPR, CRR, CLR, CER

1 A P P E A R A N C E S

2

3 Michael I. Goldman, Esquire

4 GOLDMAN & HELLMAN

5 8751 West Broward Boulevard

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9 michael@goldmanandhellman.com

10 (Present via videoconference.)

11 COUNSEL FOR PLAINTIFF/COUNTERDEFENDANT

12

13 Michelle Melin Niemeyer, Esquire

14 MICHELLE M. NIEMEYER, P.A.

15 244 Biscayne Boulevard

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17 Miami, Florida 33132

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20 (Present via videoconference.)

21 COUNSEL FOR DEFENDANT/COUNTERPLAINTIFF

22

23

24

1 I N D E X

2

3 DEPONENT: ANDREW BALL

4 (Present via videoconference.)

5 EXAMINATION PAGE

6 (BY ATTORNEY NIEMEYER) 319

7

8 E X H I B I T S

9 NO. PAGE

10 Exhibit 30 Handwritten Notes (two pages) 320

11

12 (Original exhibit marked electronically

13 and retained with the transcript.)

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1 P R O C E E D I N G S

2

3 MADAM COURT REPORTER: This is Laurie
4 Berg. I am a Registered Professional Reporter and a
5 Certified Realtime Reporter with the National Court
6 Reporters Association, a Certified eDepoze Reporter,
7 as well as a Certified Court Reporter with the State
8 of New Hampshire. I am a Notary Public in the State
9 of New Hampshire and the Commonwealth of
10 Massachusetts.

11 The attorneys participating in this
12 proceeding acknowledge that I am not physically
13 present in the proceeding room, nor am I physically
14 present with the witness, and that I will be reporting
15 this proceeding remotely via videoconference.

16 They further acknowledge that, in lieu of an
17 oath administered in person, the witness will verbally
18 declare his testimony in this matter under the penalty
19 of perjury.

20 The parties and their counsel consent to this
21 arrangement and waive any objections to this manner of
22 reporting the proceeding.

23 Will the attorneys now please indicate your

24 agreement by stating your name and your agreement on

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1 the record, after which I will swear in the witness
2 and we may begin.

3 MR. GOLDMAN: I am Michael Goldman,
4 counsel for the Plaintiff, Great Lakes Insurance SE,
5 and I agree.

6 MS. NIEMEYER: Michelle Niemeyer, counsel
7 for Martin Andersson, and I agree.

8 (Deponent sworn.)

9 MADAM COURT REPORTER. Thank you very
10 much. You may begin.

11

12 ANDREW BALL

13

14 having been satisfactorily identified and
15 duly sworn remotely by the Notary Public, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. NIEMEYER:

19 Q. Okay. Welcome back, Mr. Ball. And I'd like
20 to thank you for your candor in the last deposition
21 and for providing your handwritten notes, which is the
22 reason we're here today; just to talk about those

23 notes.

24 MS. NIEMEYER: So I'm going to show you a

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1 document. Let me just go into my share-screen mode
2 here. Okay.

3 BY MS. NIEMEYER:

4 Q. Can you see that document?

5 MR. GOLDMAN: Can I interrupt you with
6 something that's unrelated, but has just come up this
7 instant?

8 MS. NIEMEYER: Sure.

9 MR. GOLDMAN: We -- let's go off the
10 record.

11 (Off the record at 10:02 a.m.)

12 (Discussion off the record.)

13 (Back on the record at 10:02 a.m.)

14 MS. NIEMEYER: Okay. Let's go back on
15 the record.

16 All right. I'm going to ask the court
17 reporter to mark this two-page document. It's not
18 Bates-stamped, it's two pages of handwritten notes,
19 and to mark that as Exhibit 30.

20 (Exhibit 30 marked for identification.)

21 MADAM COURT REPORTER: All set.

22 BY MS. NIEMEYER:

23 Q. And, Mr. Ball, can you describe for us what
24 this document is?

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1 A. (Deponent viewing exhibit.) So this is the
2 notes I took where I asked Mr. Andersson for his
3 statement as far as what happened in terms of his
4 incident, and it's written in my terrible, terrible
5 handwriting. I do apologize for that. This is the
6 document that became the typed statement, which was
7 sent to him to ask for his assent, agreement and
8 signature.

9 Q. Mr. Ball, were these notes taken and kept by
10 you in the ordinary course of your business?

11 A. That's correct.

12 Q. Did you send a copy of your handwritten notes
13 to Concept when you sent the file of -- for this case
14 to Concept?

15 A. No, I did not. The reason that nobody had
16 this was entirely my omission, which, obviously,
17 wasn't on purpose.

18 Q. Okay. When you take notes during a meeting
19 with an insured, like you did with Mr. Andersson, what
20 is your goal?

21 A. In this case, it was really just to record

22 the smaller details of what happened. Obviously, we
23 -- we wanted to know the details pertinent to the
24 incident and to record them. This is standard

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1 practice for us in terms of recording the recollection
2 of what happened before memory sort of starts to fade
3 after an incident.

4 Q. When you wrote your notes, did you fully and
5 accurately include what Mr. Andersson told you, to the
6 best of your ability?

7 A. I believe so, yes.

8 Q. As you mentioned, your handwriting is a
9 little difficult.

10 (Laughter.)

11 BY MS. NIEMEYER:

12 Q. So I want to ask you to read the statement
13 word for word so that we don't make any mistakes in
14 attempting to understand what you were saying later
15 on.

16 A. (Deponent viewing exhibit.) Sure.

17 Absolutely, I'll -- I'll start at the top, and I'll
18 give the disclaimer that my handwriting is usually
19 better, but, of course, when people are speaking, I
20 have to write rather quickly.

21 Q. Take your time.

22 A. (Deponent viewing exhibit.) So it says,
23 Varadero Aruba, departed 1730 on Saturday 14th
24 December 2019. Two on board. Ronald Naranja, 18

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1 knots east. Sea --
2 (Technical difficulties.)
3 MADAM COURT REPORTER: Oh, hold on. He
4 has frozen.

5 (Off the record at 10:05 a.m.)
6 (Discussion off the record.)
7 (Back on the record at 10:06 a.m.)
8 A. (Deponent viewing exhibit.) Okay. So,
9 Varadero Aruba, departed 1730 on Saturday the 14th of
10 December 2019. Two on board. Ronald Naranja. 18
11 knots each. Sea 4 feet. Motored east to lighthouse.
12 Tried to sail northeast trying to steer approximately
13 50 degrees to SXM.

14 Crew seasick. Not making way to wind.
15 Changed course -- course north to Ponce. Weather not
16 forecast to deteriorate. 22 to 24 knots with heavier
17 swell Sunday. Crew incapacitated. 25 to 30 Sunday,
18 Monday and squalls to 30. Headsail only, partially
19 furled.
20 Sunday, generator working, and Monday,

21 Tuesday not working. Ended in Santo, as in Santo
22 Domingo. VHF receives but not send. Called sales
23 broker on Sat phone Tuesday midday. Recommend Boca
24 Chica for repair. Arranged slip at Boca Chica marina

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1 with unknown person. Was told proceed to Boca Chica.
2 Informed marina will need guidance in marina.
3 Okay. Arrived just after 1700. Called. No
4 answer. Finally, someone answered, but no English.
5 Assured speaks minimal Spanish. Moved at 1 to 2 knots
6 boat speed. Looking for entrance lights while
7 standing off. Depth sounder rapidly decreased. Both
8 engines astern full. Swell took vessel on rocks.
9 Electronic charts provided. No paper charts.

10 I'm going to have to ask you to scroll down
11 there for me.

12 Q. (Attorney complied.) Okay. Sorry.

13 A. (Deponent viewing exhibit.) Hit SOS on
14 iridium -- on iridium go. Sorry. VHF not
15 transmitting. Breakwater unlit. Not on electric
16 chart -- electronic chart.

17 Crew is Dutch. No Spanish. Stayed on board
18 until local diver walked out. Sent SOS to shore with
19 light. Spoke to iridium people. They said wait.
20 Walked to shore with Alex Cottier. Spoke to Navy

21 police also present. Police walked assured to hotel.
22 Assured arranged two security as of Tuesday. Cleared
23 immigration Wednesday and met with salvors. Notified
24 insurers.

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1 And then I've got some notes below there as
2 well, which aren't necessarily relevant to the
3 statement, but, since they're in the document, I think
4 I should probably read them.

5 Q. Please do.

6 A. (Deponent viewing exhibit.) First it says,
7 Martin (809)449-2848. There's a second phone number
8 for him. It looks like (774)249-4194.

9 And if you scroll down a little bit more,
10 I've -- I've made some notes to myself as to the --
11 the various bits that I was interested in following up
12 on after the statement, which was obviously the GPS, I
13 think we talked about that, the contact details for
14 the crew, it says, crew contact.

15 I've written down Alex, which speaks to Alex
16 Cottier, the statement here, as far as typing it up,
17 and also finding out how much fuel was on board. And,
18 obviously, that -- that's of interest to us, in terms
19 of the environmental risk, if the boat's to break

20 apart.

21 Q. Okay. And just -- I have just a couple
22 questions to clarify some acronyms here.

23 A. Sure.

24 Q. In the first line, where you said, "Departed

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1 1730," and this isn't an acronym, but it looks like a
2 five to me.

3 Is it possible that was a five, or is that
4 your way of writing a three?

5 A. (Deponent viewing exhibit.) No, that's a
6 three. I -- I generally would not work in times more
7 specific than every quarter hour, unless there --
8 unless there was something to indicate a very, very
9 specific time, we'd -- we'd work on a -- on a lower
10 resolution than that.

11 Q. Okay. And when you said "approximately 50
12 degrees to access SXM," what did you mean by "SXM"?

13 A. SXM is the abbreviation for St. Martin.

14 Q. Okay. In about, let's see, one, two, three,
15 four, five, six, seven, eight, nine, ten, 11, the 12th
16 or 13th line, 12th line, I think, it says "Sun,"
17 which, I believe you said Sunday --

18 A. (Deponent viewing exhibit.) Correct.

19 Q. -- generator working and -- and then it says

20 "Mon," and it looks like there's a dot there, like a
21 period.

22 A. (Deponent viewing exhibit.) There is.

23 Q. And then it is says "Tues."

24 A. (Deponent viewing exhibit.) There is.

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1 Q. And is there --

2 A. (Deponent viewing exhibit.) There is.

3 Go ahead.

4 Q. Do you see that?

5 Let me move that up so you can see the page.

6 I'm sorry. I meant to show you that and --

7 A. (Deponent viewing exhibit.) All right.

8 Q. -- what I'm talking about is right there
9 (indicating).

10 A. (Deponent viewing exhibit.) Right. So -- so
11 what I've written there, that is indeed a period. So
12 what I'm trying to indicate to myself there is that
13 Sunday, the generator was working -- and Monday. And
14 then Tuesday, not working.

15 Q. Okay.

16 A. (Deponent viewing exhibit.) There's a NW
17 after Tuesday.

18 Q. Okay. And there's another place where it

19 looks like it might be a period and it wasn't clear,
20 and I wanted to make sure we -- we clarified that,
21 too. If you go about -- let's see, one, two, three,
22 four, five, six, seven, eight, nine lines up, the line
23 starts with "charts provided."

24 A. (Deponent viewing exhibit.) Yup.

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1 Q. And then it's -- right next to that, I
2 believe you said no, but it looks like there's an N,
3 period, D?

4 A. (Deponent viewing exhibit.) No, that -- that
5 is no.

6 Q. Okay. You're sure of that?

7 A. Yup.

8 Q. Okay. I don't have, really, questions about
9 that, specifically, but I do want to ask you; after
10 those notes were taken and before you drafted the
11 e-mail that ultimately became the master's protest in
12 the report that you submitted, did you speak with
13 Mr. Andersson again about any of those details?

14 A. Outside of the e-mail I sent that said, you
15 know, can you -- can you confirm that this is accurate
16 and, if so, will you sign it to show that it is. I
17 don't believe that I did. I think there was -- when
18 we went through the documents last time, there was a

19 response there in terms of clarifying as to who spoke
20 Spanish and how much. Other than that, as far as I
21 recall, no.

22 Q. Okay. Between the 21st of December, when you
23 had this interview and you wrote these notes, and
24 December 23rd, when you wrote the typed statement, who

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1 did you talk to about it?

2 A. I think I probably would've been in transit
3 at that time. If I remember correctly -- no, I
4 probably don't remember correctly. I don't -- I don't
5 believe I would've spoken to anybody outside of our
6 office about this.

7 Q. Okay. And when you say outside of your
8 office, who do you mean?

9 A. That would be Bill Bailey.

10 Q. Do you recall what was said in any
11 conversation you had with Mr. Bailey about the
12 incident or about your notes or what happened, to your
13 knowledge, at that point?

14 A. Not particularly. When I'm abroad, we -- we
15 normally, as long as there is cell phone service, it
16 depends on where I am, but, when I'm abroad, we
17 normally talk a few times a day.

18 And, obviously, I try and keep him updated of
19 -- of any and all info that's happening, specifically,
20 so that we have the benefit of sort of both of our
21 minds on the case, and if he's got any additional
22 questions, he can ask. You know, you'll notice that
23 he cosigns the reports as well and so, subsequently,
24 it has to be his work as well.

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1 And -- and so, you know, that's, I think,
2 sort of, part of what we're -- what we're selling as
3 part of our services; you get two minds, not one. And
4 so we do communicate very closely. I can --
5 obviously, I can't remember specifically what I said,
6 what -- what, it was a year and a half ago, but I
7 don't think that there is anything in here that I
8 would've withheld, if I can put it that way. We're --
9 we're -- we're pretty much a hundred percent
10 transparent with each other.

11 Q. Does anything stand out about what you
12 discussed with Mr. Bailey in this particular case?

13 A. No, not really. No. At this time, I don't
14 think we had had the opportunity to -- or, at least, I
15 hadn't had the opportunity to fully review the policy.
16 We were more interested in the incident at the time.

17 And so I don't think I was aware of any of

18 the navigational limits and the other things that have
19 come up. So, at this particular time, it was really
20 about recording damages and recording the details of
21 the incident as best we could. So...

22 Q. Did you -- did you consult with the policy
23 before you wrote that written report, the master --
24 that turned into the master's protest?

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1 A. I don't believe I did, no.

2 Q. Why not?

3 A. Generally, when these things happen, it's --
4 it's a relatively quick response that we have.
5 Obviously, this one took a few extra days. We had
6 flight issues, and then I had delayed flights and all
7 sorts, but the -- the first angle of approach
8 for us is really to determine what happened and -- and
9 respond as quickly as we can to prevent further loss
10 and to sort of accurately quantify everything. Once
11 we get back to the office and start preparing reports,
12 then we'll dig into the paperwork a little bit more.

13 Q. So do you have any recollection of exactly
14 when it was, like, and -- and timing-wise, when you
15 say when you -- when you get back to the office, were
16 you back in the office at the point that you wrote the

17 e-mail that you sent to Mr. Andersson for his
18 agreement?

19 A. I don't believe so, no. I'd have -- I'd have
20 to go back and check the dates as to my travel and
21 when the e-mail was written. I think we have all of
22 that in the file anyways.

23 But my recollection -- well, I mean, put it
24 this way, I -- I can see no reason that I would wait

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1 and delay that process for my arrival back here to the
2 BVI. You know, I had Internet in the hotel. I had my
3 laptop in the hotel. I had the ability to type that
4 up.

5 And the other side of it is, certainly, being
6 so close to Christmas, I'm sure I probably would've
7 been keen to keep everything moving so that I had a
8 relatively clear plate over the holidays.

9 Q. Do you -- would you say that the -- the -- I
10 don't recall if we had -- I know that we had copies of
11 your plane tickets going to Boca Chica, but I'm not
12 sure that we had plane tickets showing your return
13 home, so it's not really clear. I know that the date
14 of your inspection was the 21st and the date of that
15 interview.

16 What's your recollection about the travel

17 home?

18 A. (Deponent viewing documents.) I -- well, I
19 would've gone home as soon as a flight was available.
20 I may have had an extra day there, I think, because
21 there wasn't a flight available. Yeah, so it's --
22 it's in the file here. It's in -- it's in the bundle
23 that I've got (indicating) with the court documents.
24 So it references -- I don't have the -- your Bates

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1 numbers on here, so I don't know which one it is in
2 your file.

3 Q. Okay. Describe it the best you can and we
4 can probably figure it out.

5 A. (Deponent viewing documents.) So it
6 references a flight on Sunday, the 22nd of December,
7 from Santo Domingo to Tortola. And just in case you
8 need it, as you go through, the booking reference on
9 that is alpha, alpha, zulu, 4, bravo, uniform.

10 The next question, of course, is when I sent
11 him that document, which, again, is in the file here
12 somewhere, and I know we went through that last time.
13 If I can find it in here, I'll find the date on it.

14 All right. So the e-mail I sent was on the
15 23rd of December, so that was after I returned. That

16 was the day after I got back.

17 Q. Knowing that, do you believe that you looked
18 at the policy prior to writing that master's protest?

19 A. In that short of a time period, no, I don't.

20 The -- the -- the defining factor on that, for me, in
21 terms of my sort of personal process, would be the
22 date on the reports, which would be -- we wrote a --

23 (Technical difficulties.)

24 MADAM COURT REPORTER: He's frozen.

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1 MS. NIEMEYER: Okay.

2 (Off the record at 10:20 a.m.)

3 (Discussion off the record.)

4 (Back on the record at 10:20 a.m.)

5 A. (Deponent viewing document.) I was aware of
6 it. I would've written in this report on the 23rd,
7 which is why I'm looking at it. So, as of the 23rd, I
8 was aware of it. So, I think, the 23rd would've been
9 the day that we went through everything in the office.

10 So, yeah, I suppose I was aware of the
11 navigational limits at the time I sent that statement.
12 And, of course, I think, if you compare the notes with
13 the statement, there's not a whole lot of deviation
14 there.

15 MS. NIEMEYER: Okay. Okay. I don't have

16 any further questions.

17 THE DEPONENT: (Indicating.)

18 (Laughter.)

19 MADAM COURT REPORTER: Okay.

20 THE DEPONENT: Okay.

21 MADAM COURT REPORTER: Okay. This is
22 Laurie Berg, the court reporter. I'm just going to
23 ask Michelle and Michael if you want the exact same
24 order that you had last time.

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1 And we can start with Michelle, please.

2 MS. NIEMEYER: Sort of. I discovered
3 that my ASCII didn't load right into k -- into
4 TextMap, so we had to tweak that, and I got a
5 different version of the electronic.

6 MADAM COURT REPORTER: Okay.

7 MS. NIEMEYER: I don't remember what that
8 was.

9 MADAM COURT REPORTER: That's fine. The
10 office will know.

11 MS. NIEMEYER: Yeah, they'll know.
12 They'll know.

13 MADAM COURT REPORTER: Okay.

14 MS. NIEMEYER: But it works now.

15 MADAM COURT REPORTER: Great.

16 Okay. And Michael?

17 MR. GOLDMAN: What I ordered last time is

18 fine.

19 MADAM COURT REPORTER: Okay. Thank you.

20 (DEPOSITION OF ANDREW BALL concluded at

21 10:22 a.m.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 MIDDLESEX, SS.

3

4 I, Laurie J. Berg, Certified Court Reporter,
5 Registered Professional Reporter, Certified Realtime
6 Reporter, Certified LiveNote Reporter, Certified
7 eDepoze Reporter and Notary Public, in and for the
8 Commonwealth of Massachusetts, do hereby certify that
9 pursuant to appropriate notice of taking deposition,
10 there remotely appeared before me the following named
11 person, to wit: ANDREW BALL, who was by me duly
12 sworn; that he was thereupon examined upon his oath
13 and his examination reduced to writing by me; and that
14 the deposition is a true record of the testimony given

15 by the witness.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and seal this 11th day of July, 2021.

18

19 My commission expires:

20 September 14, 2023

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22

23

24 Notary Public

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1 ERRATA SHEET DISTRIBUTION INFORMATION

2 DEPONENT'S ERRATA AND SIGNATURE INFORMATION

3

4 ERRATA SHEET DISTRIBUTION INFORMATION

5 The original of the errata sheet has been

6 delivered to Michael I. Goldman, Esquire.

7 When the errata sheet has been completed by

8 the deponent and signed, a copy thereof should be

9 delivered to each party of record and the ORIGINAL

10 delivered to Michelle Melin Niemeyer, Esquire, to whom

11 the original deposition transcript was delivered.

12

13 INSTRUCTIONS TO DEPONENT:

14 After reading this volume of your deposition
15 indicate any corrections changes to your testimony
16 and the reasons therefor on the errata sheet supplied
17 to you and sign it. DO NOT make marks notations on
18 the transcript volume itself. Add additional sheets
19 if necessary. Please refer to the above instructions
20 for errata sheet distribution information.

21

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1 PLEASE ATTACH TO THE CONTINUED DEPOSITION
2 OF ANDREW BALL
3 CASE: Great Lakes Insurance SE
4 V. Martin Andersson
5 DATE TAKEN: June 29, 2021

10 PAGE LINE CHANGE/REASON

11

12

13

14 _____

15 _____

16 _____

17 I have read the foregoing transcript of my deposition
18 and except for any corrections changes noted above, I
19 hereby subscribe to the transcript as an accurate
20 record of the statements made by me.

21 Executed this _____ day of _____, 2021.

22

23 _____

24 ANDREW BALL